

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/751,105  
Published for Opposition in the OFFICIAL GAZETTE on December 12, 2006

\_\_\_\_\_  
UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.,

\_\_\_\_\_  
Applicant

**RESPONSE OF OPPOSER UMG RECORDINGS, INC., TO APPLICANT**  
**MATTEL, INC.'S EVIDENTIARY OBJECTIONS TO AND REQUESTS TO**  
**STRIKE PORTIONS OF DECLARATION OF MICHAEL RAJNA**

Opposer UMG Recordings, Inc. ("Opposer" or "UMG") hereby responds to Applicant, Mattel, Inc.'s ("Applicant" or "Mattel") evidentiary objections to and request to strike portions of Declaration of Michael Rajna, dated February 27, 2009, as follows:

<b>Evidence:</b>	<b>Applicant's Objection:</b>	<b>Opposer's Response:</b>
On or around November 16, 2004, Konami entered into a license agreement with UMG Recordings, Inc. ("UMG") concerning the	(a) Improper Legal Opinion (Fed. R. Evid. 701);  (b) Exhibit speaks for itself (Fed. R. Evid. 1002).	The witness has testified as to, <i>inter alia</i> , his position with his employer and his familiarity with its books and records. His

<p>right to use the MOTOWN Marks in connection with Karaoke Revolution. A true and correct copy of the license agreement is attached hereto as <u>Exhibit 1</u>. (Rajna Decl., ¶ 3.)</p>		<p>introduction of a license agreement is appropriate non-opinion fact testimony. His authentication thereof is likewise appropriate foundational testimony. This evidence is admissible under, <i>inter alia</i>, FRE 701, 1002 and 1003.</p>
<p>True and correct copies of photographs depicting Karaoke Revolution are attached hereto as <u>Exhibit 2</u>. (Rajna Decl., ¶ 4.)</p>	<p>(a) Exhibit speaks for itself (Fed. R. Evid. 1002).</p>	<p>The witness has testified as to, <i>inter alia</i>, his position with his employer and his familiarity with its books and records. His introduction and authentication of an image of one of his employer's products is appropriate foundational testimony that is admissible under, <i>inter alia</i>, FRE 1002, 1003 and TBMP 703.01.</p>

<p>Konami paid UMG as set forth in the license agreement between the parties for sales of Karaoke Revolution for the period 2004 though the present. Beginning in November of 2004, Konami also invested, and continues to invest, in the advertising of Karaoke Revolution, including use of the Motown Marks, through television, print and point-of-purchase advertising. (Rajna Decl., ¶ 6.)</p>	<p>(a) Improper Legal Opinion (Fed. R. Evid. 701).</p>	<p>The witness has testified as to, <i>inter alia</i>, his position with his employer and his familiarity with its books and records. His testimony with regard to his employer's payment to Opposer, and investment in and types of advertisement of a product is appropriate non-opinion fact testimony that does not violate FRE 701.</p>
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Dated: March 15, 2010

Respectfully submitted,

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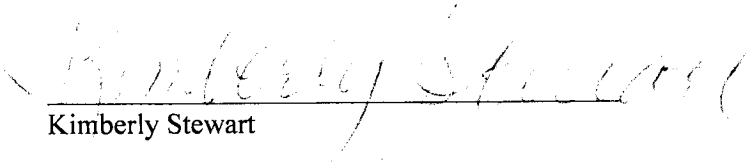
Alexa L. Lewis, Esq.  
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11377 West Olympic Boulevard  
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Attorneys for Opposer

**CERTIFICATE OF MAILING**

Date of Deposit: March 15, 2010

"Express Mail" mailing label number: EB519288551US

I hereby certify that this paper or fee, **RESPONSE OF OPPOSER UMG RECORDINGS, INC., TO APPLICANT MATTEL, INC.'S EVIDENTIARY OBJECTIONS TO AND REQUESTS TO STRIKE PORTIONS OF DECLARATION OF MICHAEL RAJNA**, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" on the date indicated above and is addressed to: UNITED STATES PATENT AND TRADEMARK OFFICE, Trademark Trial and Appeal Board , P.O. Box 1451, Alexandria, Virginia 22313-1451.

  
Kimberly Stewart

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

On March 15, 2010, I served a copy of the foregoing document(s) described as **RESPONSE OF OPPOSER UMG RECORDINGS, INC., TO APPLICANT MATTEL, INC.'S EVIDENTIARY OBJECTIONS TO AND REQUESTS TO STRIKE PORTIONS OF DECLARATION OF MICHAEL RAJNA** on the interested parties in this action at their last known address as set forth below by taking the action described below:

Lawrence Y. Iser ([liser@kwikalaw.com](mailto:liser@kwikalaw.com))

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- ☐ **BY MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) addressed as set forth above, and deposited each envelope in the mail at Los Angeles, California. Each envelope was mailed with postage thereon fully prepaid.
- ☐ **BY OVERNIGHT MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) designated by the carrier, with delivery fees provided for, and addressed as set forth above, and deposited the above-described document(s) with in the ordinary course of business, by depositing the document(s) in a facility regularly maintained by the carrier or delivering the document(s) to an authorized driver for the carrier.
- ☒ **BY PERSONAL DELIVERY:** I placed the above-mentioned document(s) in sealed envelope(s), and caused personal delivery by FIRST LEGAL SUPPORT SERVICES of the document(s) listed above to the person(s) at the address(es) set forth above.
- ☐ **BY PLACING FOR COLLECTION AND MAILING:** I placed the above-mentioned document(s) in sealed envelope(s) addressed as set forth above, and placed the envelope(s) for collection and mailing following ordinary business practices. I

am readily familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at 11377 West Olympic Boulevard, Los Angeles, California 90064-1683 in the ordinary course of business.

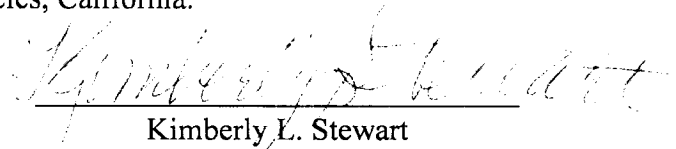
☐ **BY ELECTRONIC MAIL:** I served the above-mentioned document electronically at \_\_\_\_:\_\_\_\_.m. on the parties listed at the email addresses above and, to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary.

☐ **BY FAX:** On \_\_\_\_\_, at \_\_\_\_\_ am/pm, from facsimile number (310) \_\_\_\_\_, before placing the above-described document(s) in sealed envelope(s) addressed as set forth above, I sent a copy of the above-described document(s) to each of the individuals set forth above at the facsimile numbers listed above. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of that report is attached hereto.

I declare that I am employed in the office of a member of the State Bar of California and various federal bars, at whose direction such service was made.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 15, 2010, at Los Angeles, California.

  
\_\_\_\_\_  
Kimberly L. Stewart